IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 20155 of 2006(Y)

PETITIONER:

V.CHANDRAN, VETTIKKALLADI HOUSE,
P.O. KARAKURISSI, PALAKKAD 678 595.

BY ADV. SRI.N.NAGARESH
SRI.BINU PAUL

RESPONDENTS:

1.DISTRICT COLLECTOR,
PALAKKAD.

2.REVENUE DIVISIONAL OFFICER,
OTTAPALAM.

3.CIRCLE INSPECTOR OF POLICE,
MANNARKAD.

4.KARAKURISSI GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, KARAKURISSI.

5.VIJAYAN,
PULLANGANY PUTHEN VEEDU, PONTHYALIL,
KARAKURISSI P.O.

R1 TO R3 BY GOVT. PLEADER MR.MATHEW G.VADAKKEL
R5 BY ADV. SRI.M.RAMESH CHANDER
R4 BY ADV.SRI.K.K.RAJEEV

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.20155 OF 2006

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DATED THIS THE 7TH MARCH, 2007

J U D G M E N T

The petitioner is a member of Hindu Cheruman Community, a Scheduled Caste community in Karakurissi Panchayat and respondents are the District Collector, the Revenue Divisional Officer, the Circle Inspector of Police, the Karakurissi Grama Panchayat and one Vijayan, a private party. According to the petitioner,he resides in the Vettikkallady Harijan Colony where there are 125 Harijans belonging to the same community as residents. It is claimed that for about last 300 years, members of the Hindu Cheruman Community are using the burial ground in Sy.No.4/1A.0.50 and 4/1B.16.66 in Karakurrissi Village in Mannarkad Taluk and that in all documents in respect of the land adjacent to the burial ground including registered documents the property is described as Araparaparambil petta chudalakunnu. It is conceded that none of the members of the community are having any document of title in respect of the burial ground. But as a matter of fact, from time immemorial, members of the community are using this ground for burial of their dead. Though the burial ground spread over nearly one acre, certain persons who own adjacent land were gradually encroaching the burial ground by planting rubber. Since the members

of the community were financially and socially weak without any political clout, they could not effectively oppose gradual encroachment of their burial ground. The petitioner points out that during the last 10 years, as many as 10 members of the community including his grandfather were buried in this burial ground and submits that in the second week of July, 2006 the petitioner and other members of the community came to know that the 5th respondent is trying to plant the entire remaining extent of burial ground with rubber. When the petitioner and others opposed the move, police officers intervened in the issue in favour of the 5th respondent and it is learnt that court orders have also been obtained by the 5th respondent without impleading the affected parties. Ext.P1 complaint has been submitted by the petitioner to the 1st respondent on 19.7.06. To the 2nd respondent also complaint has been submitted and Ext.P2 is copy of that complaint. In spite of Exts.P1 and P2, respondents have not taken any steps for protecting the burial ground and upholding the rule of law. The S.I. of Police has actually summoned the members of the community and warned them that the 5th respondent has already obtained police protection orders from court and that he will be commencing agricultural operations in the burial ground on and from 1.8.2006. The petitioner contends that no police protection orders

have been issued against him to his knowledge and in case the 5th respondent is permitted by the police to have agricultural operations in the burial ground, the unorganised and socially weaker section will be put to hardship. On these averments, the petitioner has raised several grounds and prays for i) a declaration that the Arappara burial ground in Sy.No.4/1A.0.50 and 4/1B.16.66 of Karakurrissi Village is deemed to have been registered under Rule 4 of the Kerala Panchayat Raj (Burial and Burning Ground) Rules, 1998; ii) a writ of mandamus commanding respondents 1 and 2 to take immediate steps to protect the Arappara burial ground; iii) a writ of mandamus directing respondents 1 and 2 to consider and dispose of Exts.P1 and P2; and iv) a writ of mandamus commanding respondents 1 to 3 to prevent the 5th respondent from trespassing upon and encroaching into the Arappara burial ground.

2. The 5th respondent has filed a counter affidavit in which it is contended that the writ petitioner has suppressed material facts within his knowledge and such conduct disentitles him to the discretionary relief under Article 226 of the Constitution. He has further contended that he is in possession of one acre of land in Karakurissi village in Arappara Desom and has been cultivating rubber in the said property. Ext.R5(a) permission from the Rubber Board is relied on in this regard.

According to him, he is eking out his livelihood by deriving income from the rubber cultivation in the property. He states that when several persons attempted to trespass into the property and cause damage to the rubber plantation, he filed Ext.R5(b) suit before the Munsiff's Court, Mannarkkad and obtained an interim injunction order against the defendants therein restraining them from trespassing into the property. He alleges that in gross violation of that interim order the defendants in the suit again attempted to trespass into the property which necessitated filing of a petition before the Sub Inspector of Police and Ext.R5(c) is copy of that petition. It is further contended that the petitioner himself is in possession of 80 cents of land in which the petitioner is having his own rubber plantation and it is alleged that it is only at the behest of certain other persons that the present writ petition has been filed. Denying the allegations in the writ petition that the dead bodies several persons including the close relatives of the petitioner have been buried in this property, it is contended that exclusively for the persons belonging to the petitioner's community the Panchayat has purchased 2.45 cents of land in Survey No.198/18 of Munhakanni in Karakurissi Village from one Puthuveettil Muhammed for the purpose of establishing a burial ground.

3. As directed by this court, a statement has been filed by the 2nd

respondent-R.D.O. It is stated therein that the R.D.O. directed the Tahsildar, Mannarkkad to enquire into the complaint received from the petitioner and the Tahsildar, Mannarkkad submitted his report on 25.8.2006. But in the meanwhile the present Writ Petition was filed and in view of the pendency of the Writ Petition the further action on the report submitted by the R.D.O. is kept pending. The report of the Tahsildar reveals that the Arappara burial ground exists in Karakurussi Village in Survey No.4/1A and 4/1B and that the said land is used as burial ground "for the last few years". It is further stated that the petitioners (including the writ petitioner) have not produced any records of the land in question. Importantly it is reported that the land in question is presently in the possession of Mr.Vijayan, the 5th respondent as per partition deed No.1928/06 of Katampazhipuram S.R.O. and that the present dispute between the petitioner and the members of his community and the 5th respondent arose when the 5th respondent started "Puthukrishi" in April 2006 on this land. It is pointed out that the 5th respondent is having an injunction order in his favour in O.S.No.73 of 2006 on the files of the Munsiff Magistrate's Court, Mannarkkad against the petitioner and members of his community entering into the property. It is further reported that three dead bodies belonging to members of the petitioner's community were

buried in the land in question in the years 1992, 2001 and 2003 respectively and that the issue is presently pending before the Munsiff's Court, Mannarkkad.

4. On behalf of the 4th respondent-Panchayat also a statement has been filed. It is stated therein that no burial ground for the Hindu Cheruman Community to which the petitioner belongs has been registered or recorded in the registers maintained by the Panchayat. But the Panchayat understands that certain dead bodies have been buried in the said burial ground referred to in the Writ Petition. The Panchayat further states that no complaint whatsoever has been submitted by the petitioner or anybody else regarding the burial ground before the Panchayat.

5. Heard Mr.N.Nagaresh, learned counsel for the petitioner, Smt.Sanjeetha representing Adv.Mr.M.Ramesh Chander, counsel for the 5th respondent, Mr.K.K.Rajeev, counsel for the 4th respondent-Panchayat and the learned Government Pleader for respondents 1 to 3. The learned Government Pleader would make available for my perusal the file which is kept by the District Collector. Smt.Sanjeetha would place before me copies of Possession Certificate No.2693/06 issued by the Village Officer, Karakurussi, Receipt No.27840 issued by the Kerala Agricultural Workers Welfare Fund Boardk on 1.6.2006

against remittance of contribution by the 5th respondent, the basic tax receipt for a total extent of 2 acres and 21 ¼ cents including the property in question apart from producing the photostat copy of the partition deed dated 3.5.2006 relied on by the 5th respondent to show that it is the 5th respondent who is having title.

6. The learned counsel would make submissions on the basis of the pleadings and the statement filed by their respective parties and the documents placed on record and made available for perusal. It is true that the property in question is referred referred to even an ancient document as 'Chudalakunnu parambu' a name which indicates that at least a portion of the property has been used at some point of time for burning or burial of dead bodies. But at the same time the report submitted by the Panchayat and the R.D.O. will show that the writ petitioner's version that for the past 300 years the property was being used only as burial ground is a highly exaggerated version. It may be true that two or three dead bodies belonging to the members of the petitioner's community have been buried on the property during the past few years. But obviously and concededly the petitioner and for that matter the members of his community are not having any title and much less possession over any portion of the property in question. Going by the documents such as, title document, basic tax receipt,

possession certificate and the permission issued by the Rubber Board for cultivating rubber, the property is under the ownership and possession of the 5th respondent. Moreover I notice that the issue is under consideration by the Munsiff-Magistrate Court, Mannarkkad in O.S.No.73 of 2006. Though the petitioner claims title to a partition deed of the year 2006, it will be seen that the petitioner's predecessors were having title on the basis of a relatively ancient document of 1968. The ground in question has not been registered with the local body as a burning ground or burial ground at all. Under these circumstances, the petitioner is directed to seek his impleadment in the proceedings which are presently pending before the Munsiff's Court, Mannarkkad or to file a separate suit and seek reliefs from the civil court. The Writ Petition will stand dismissed. This dismissal, however, will not stand in the way of the petitioner pursuing remedies, if any, available to him under other statutes.

(PIUS C. KURIAKOSE, JUDGE)

tgl/srd